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Scott A. Rosenberg

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MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP

300 S. WACKER DRIVE

32ND FLOOR

CHICAGO, IL 60606

EXAMINER

JANVIER, JEAN D

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 09/978,170 | Applicant(s) ROSENBERG ET AL. | |
| | Examiner JEAN JANVIER | Art Unit 3688 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5-11,13-18,20 and 22-25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-2, 5-11, 13-18, 20, 22-25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

Re-Open Prosecution

1. In view of the Appeal Brief, filed on 02/03/2009, PROSECUTION IS HEREBY REOPENED, as set forth below, to address a 112, second paragraph issue that was inadvertently omitted during prosecution to thereby put the Application in better condition for Appeal.

[In general, as featured on page 9 of the Brief, the Appellant keeps on referring to **“the paused user selected program content”**, which appears to be different **from the “user selected program content” or the claimed “ad”**. Here, although the Examiner did not issue a 112, second paragraph for lacking proper antecedent basis, however, **“the paused user selected program content”**, in **“upon entering the pause mode, pausing the user selected program content and displaying the paused user selected program content on the display of the video replay system during a time delay greater than zero seconds”** limitation, lacks proper antecedent basis and it is also unclear what content should be displayed on the display of the video replay system upon entering the pause mode. Having said that, the latter renders the claim limitation confusing and ambiguous].

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have

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been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

Further, Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

DETAILED ACTION

Specification

Status of the claims

2. Claims 1-2, 5-11, 13-18, 20, **22-25 and newly added** claims 26-28 are currently pending in the Instant Application.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims **1-11, 13-18, 20 and 22-28** are rejected Under 35 USC 112, second paragraph as lacking proper antecedent basis.

Independent claims 1 and 20 recite the limitation "**upon entering the pause mode, pausing the user selected program content and displaying the paused user selected program content on the display of the video replay system during a time delay greater than zero seconds.**" There is insufficient antecedent basis for **"the paused user selected program content"**, in "displaying the paused user selected program

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content on the display of the video replay system during a time delay greater than zero seconds”, in the claims. It is also unclear what content should be displayed on the display of the video replay system upon entering the pause mode since the **the paused user selected program content** is different from either the “user selected program content” or the claimed “ad.”

Further, the above deficiency renders the claim limitation confusing and ambiguous since “the paused user selected program content” appears to be different from the “user selected program content” or the claimed “ad”.

Dependent claims 2-11, 13-18, and 22-28 do not cure the above deficiencies and are likewise rejected.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-2, 5-11, 13-18, 20, 22-25 and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over USP 5,740,549A (Reilly) in view of Official Notice.

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As per claims 1-2, 5-11, 13-18, 20 and 22-24 and 26-27, Reilly discloses an information and advertising distribution system. A remote server stores and updates a database of information items and advertisements. The information items and advertisements are each categorized so that each has an associated information category. A workstation or user computer (video replay system), remotely located from the data server or server, includes a display device, a communication interface for receiving at least a subset of the information items and advertisements from the data server database and local memory for storing the information items and advertisements received from the data server. An information administrator in each workstation establishes communication with the data server from time to time so as to update the information items and advertisements stored in local memory with at least a subset of the information items and advertisements stored by the data server. An information display controller (pause module) in each workstation displays on the workstation's display device at least a subset of the information items and advertisements stored in local memory when the workstation (video replay system) meets predefined **idleness (pause) criteria or conditions. At least, a subset of the workstations includes a profiler for storing subscriber profile data.** The subscriber profile data represents subscriber information **viewing preferences**, indicating information categories for which the subscriber does and does not want to view information items. **The information display controller includes a filter for excluding from the information items displayed on the display device those information items inconsistent with the subscriber profile data (on display or video display, displaying user selected program content or customized program content-See abstract).**

The present system relates generally to computer based information distribution systems and particularly to a system for distributing to a set of subscribers' computers information matching each subscriber's interests (selected program content) as well as advertising and for distributing the information and advertising to each subscriber's computer during time periods in which the subscriber's computer is otherwise inactive or during a pause (col. 1: 4-10).

The system disseminates information and advertisements to subscribers' computers, wherein the information and advertisements are automatically displayed when the subscriber's computer is on, but meets predefined idleness criteria. For example, the predefined idleness criteria (pause conditions) could be the failure to receive any input for a period of at least five minutes, greater than zero seconds (entering a pause mode in response to a user action, which includes the action or inaction of not issuing any input to the computer to thereby trigger the display of selected program content and advertisements during an idle time or pause mode-Col. 2: 28-34). The present system is also adapted to provide each subscriber or user with **the ability to set up and** change a user profile indicating categories and subcategories of topics, which are of interest and not of interest to the subscriber and to select the news stories displayed on the subscriber's computer accordingly (col. 2: 48-53).

Screen Saver and Viewer Procedures 200 of fig. 2 are a set of procedures for controlling the display of news stories and advertisements on the users' screens. These procedures include a main screen saver procedure 201, category managers 202, an animation engine 204, a profiler 206, a data viewer 208 and an advertisement display statistics generator 210 (col. 6: 62-67). Referring once again to FIG. 2, **the animation engine 204 interprets a currently selected**

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display script and controls the **display of a selected** set of news stories and an **advertisement** in accordance with the instructions in the currently **selected display** script (col. 7: 40-44). Screen saver information 219 of fig. 4 indicating the last **displayed** information category and the last **displayed advertisement** and news items in each information category is stored in a portion of the user profile 194, which is not transmitted to the information server; and a screen saver exit mode indicator 220 indicating what actions cause the screen saver procedure to terminate and what actions cause the data viewer 208 to be executed (this is the normal operation of any screen saver, which is usually set up by the end-user who selects the time delay or time period (in minutes) of non-activity that triggers the display of at least one screen saver in text and/or image format/mode-Col. 8: 10-18).

In a preferred embodiment, the screen saver procedures for **displaying news items (paused content) and **advertisements** are invoked using the same types of criteria as are used by other types of screen saver procedures (in which the end-user selects the screen saver he wants to be displayed during the non-activity period (pause) and sets the time delay or time period (in minutes) of non-activity that will trigger the display of at least one screen saver in text and/or image format/mode). Generally, whenever the system detects a lack of user inputs (user's action) or non-activity (pause) via either keyboard or pointer device (e.g., a mouse or trackball) for a user configurable or otherwise specified length of **time** (e.g., 5 minutes), the screen saver procedures of the present system begin the **display** of news items and **advertisements** from the local information database. In the preferred embodiment, the screen saver procedures **display** news items and **advertisements** for a sequence of information categories in a sequence of 30-second **time** slots (news items are displayed for**

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**30 thirty seconds and, after the delay, the advertisements are displayed for 30 seconds)
(Col. 11: 40 to col. 13: 25).**

See Col. 1: 22-34; col. 5: 8-34; col. 6: 16-61; col. 8: 45-67; col. 10: 56 to col. 11: 9 and claims 3, 4, 8 and 9 of the reference.

In general, execution of the Screen Saver procedure 201 of fig. 2 during the pause mode, like other screen savers, is terminated and the subscriber's computer display is returned to whatever content (selected program content) was being displayed before the Screen Saver or pause mode was executed upon detection of certain types of user input (including the setting of user's preference). In the preferred embodiment, the user can use the profiler to select one of at least two exit modes: in a first mode, the Screen Saver procedure is terminated by hitting any **key on the subscriber computer's user interface keyboard or by moving the user interface's mouse or trackball; in a second mode, the Screen Saver procedure is terminated by hitting any key on the subscriber computer's user interface keyboard, but movement of the mouse or trackball does not cause the Screen Saver procedure to terminate. Rather, in the second screen saver exit mode, the subscriber can use the mouse or trackball to point to any of the news items being displayed and upon clicking one of the mouse or trackball's buttons, the data viewer 208 is executed with the news item selected by the subscriber being displayed.** In short, the entering of the pause mode stops or pauses the presentation of any currently displayed or featured content or previously selected program content to thereby display pause content scheduled to be presented during the pause mode **(entering the pause mode and pausing selected program content.....) (col. 12: 57 to col. 13: 8).**

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Finally, Reilly supports the step of entering a pause mode due to the user's or subscriber's action (i.e. inaction or a period of non-activity or idle period or lack of input from the user for a period of time, which triggers the pause mode), **while the user selected program content is being displayed on the display of the video replay system or user's workstation(i.e. work being done or in progress, such as typing a letter using MSWord or creating or reviewing a PowerPoint presentation, is displayed on the user's screen). This is a conventional behavior of screensaver based systems.** Indeed, execution of the Screen Saver procedure 201, like other or conventional screen savers, is terminated upon receipt of an input from the user or subscriber and the subscriber's computer's or workstation's display is returned to whatever (user's selected content) was being displayed before the Screen Saver was executed upon detection of certain types of user input. In other words, the content that was being displayed before the screen saver mode or pause mode content was interrupted by a use's input action or input was selected by the user or subscriber (col. 11: 40-52; col. 12: 57-61).

As per claims 1, 20 and 22-24, although Reilly discloses a system wherein a user or subscriber controls the display of content that is presented during a pause mode or idle mode by setting the timing or delay period required before the system enters the pause mode, however, Reilly does not expressly teach **pressing a pause key**, displayed on a screen (video replay system) to thereby trigger the pause mode.

However, Official Notice is taken that it is common practice in the art to display a button or icon (key), representing a stored content or software installed in the memory of a system or

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computing device, on a user's screen (desktop or video replay system) and wherein actuating, pressing, activating or clicking the button or icon (pause key) causes the stored content to be displayed on the screen or the task related to the installed software to be executed.

In addition, Official Notice is taken that it is common practice in the art that a user or subscriber, using a Windows based system, can select the password option within the screen saver software, which requires that the user re-enter his password to gain access to the system, thereby providing an extra layer of protection when the system is left unattended and before the system enters the screen saver or pause mode based on the delay or preset time period.

Further, as per claims 22-24, displaying the pause key on the video replay system (user's computer screen) or on a remote control is a matter of desires, which does not directly impact the utility or functionality of the system.

Therefore, it would have been obvious to an ordinary skilled artisan, implementing the Reilly's system, at the time of the invention to incorporate the above disclosure ("Official Notice") into the Reilly's system so as to place a button, icon or pause key representing an installed screen saver software or (pause mode software) and wherein pressing, clicking or activating by the user the displayed icon or pause key causes the system to enter the pause mode or screen saver mode before the preset time or delay/duration period has elapsed, while the user's selected program content (i.e. Microsoft Word, PowerPoint, Microsoft Excel) is being featured thereon, and display the related content or pause content thereon, thereby enabling the user or subscriber to cause the system to enter in real-time the pause mode or screen saver mode, even before the predetermined time (idle time period) has expired, and display pause content thereon

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by pressing or clicking the pause key or icon, representing the pause mode (screen saver mode), placed on the user's computer display or video replay, when the user's selected program content (i.e. Microsoft Word, PowerPoint, Microsoft Excel) is being featured thereon, and while protecting (sensitive or confidential) information that is currently displayed on the user's computer display or video replay or stored thereon since once the pause mode is being activated and the pause content is displayed, the user needs to re-enter his password to gain access to the computer or system, subsequent to exiting the pause mode, and to view or review the user's selected content or work previously displayed or left open on the display screen prior to activating the pause key to enter the pause mode and output thereon paused content.

As per claims 25 and 28, although Reilly teaches displaying pause content on a computer screen or video replay system, however, Reilly does not expressly teach displaying the content on the screen of a handheld device or cellular device (handheld video player).

However, Official Notice is taken that it is common practice in the art to play or display information (text, audio and video), including screen saver content, on the screen of handheld, mobile, portable or wireless (cellular) devices including laptop and notebook computers.

Therefore, it would have been obvious to an ordinary skilled artisan, implementing the Reilly's system, at the time of the invention to incorporate the above disclosure ("Official Notice") into the Reilly's system so as to use a handheld, mobile, wireless or portable device (video player), including a laptop or notebook computer, to display the selected content and pause content thereon when a trigger event occurs, thereby allowing a mobile user or subscriber

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(road warrior) to participate in the pause content display system that is configured to display news, sports and advertisements when a pause mode is being triggered.

As per claims 26-27, although Reilly talks about displaying user's selected content and advertisements on television set (col. 1: 13 to col. 2: 16), however, Reilly does not expressly teach that the user's selected content comprises a television program that is received at the video replay system, prior to displaying the user selected content, and stored thereto and the video replay system includes a television set.

However, Official Notice is taken that it is common practice in the art for a user or subscriber to select a program content for watching or viewing on a television set, while advertisements are displayed thereon (See background of the Reilly's Patent). Further, it is customary for a user to receive content, such as advertising data, that is stored in the memory of a set top box coupled to a television set, wherein the stored advertisement is scheduled to be displayed on the television screen during a pause mode or break in a program content selected by the user when a code in the program content matches a code stored in the memory of the set top box (See USP 5,774,170).

Moreover, selecting by a user a television program instead of a computer program and using a television set, instead of a computer, to display the selected program are a matter of desires, which does not directly impact the utility or functionality of the system (this is a different field of use).

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Therefore, it would have been obvious to an ordinary skilled artisan, implementing the Reilly's system, at the time of the invention to incorporate the above disclosure ("Official Notice") into the Reilly's system so as to use a television set, instead of or in addition to a computer system, to implement the system taught by Reilly and to let the user select for display program content including television program that is to be provided and stored ahead of time and to display paused content thereon when a trigger event or the pressing of a pause key occurs, thereby expanding the system by enabling a TV viewer or subscriber to participate in the pause content display system that is configured to display news, sports and advertisements when a pause mode is being triggered.

Response to Applicant's Arguments

7. **First of all, regarding the 112, First Paragraph Rejection, the** Examiner herein drops the said rejection since page 5 of the specification does indeed anticipate the use of a handheld video player.

Second of all, Applicant's arguments with respect to the claimed invention are based on the newly amended claims and are fully addressed in the Office Action. Further, contrary to the Applicant's contention, Reilly supports the step of entering a pause mode due to the user's or subscriber's action (i.e. inaction or a period of non-activity or idle period or lack of input from the user for a period of time, which triggers the pause mode), **while the user selected program content is being displayed on the display of the video replay system or user's workstation (i.e. work being done or in progress, such as typing a letter using MSWord or creating or reviewing a PowerPoint presentation, is displayed on the user's screen).** This is a

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conventional behavior of a screensaver based-system. Indeed, execution of the Screen Saver procedure 201, like other or conventional screen savers, is terminated upon receipt of an input from the user or subscriber and the subscriber's computer's or workstation's display is returned to whatever (user's selected content) was being displayed before the Screen Saver was executed upon detection of certain types of user input. In other words, the content that was being displayed before the screen saver mode or pause mode content was interrupted by a use's input action or input was selected by the user or subscriber (col. 11: 40-52; col.12: 57-61).

Therefore, the Applicant's request for allowance or withdrawal of the last Office Action has been fully considered and respectfully denied in view of the foregoing response since the Applicant's arguments as herein presented are not plausible and thus, the current **Office Action has been made Final.**

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a. **US Patent 5, 959, 621 to Nawaz** discloses a system for displaying data items in a ticker display pane (dynamic component) on a client computer or computer workstation or target system 184 wherein a user's client computer 184 receives from at least one or more sources or service providers over the Internet (global communication network) data including data items and/or advertisements (stream data) to be displayed on a ticker pane 142 of fig. 3 on a screen desktop 104 of fig. 3 associated with the client computer 184 and wherein the data or data items are displayed in a sequence where the data items or stream of data 150, 152, 154 and 156 are

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being replaced or updated on the ticker display pane 142 so as to display data item 156 on the first end 170 until the last data item 150 on the second 172 and the sequence restarts until the last data item is displayed on the ticker pane. Here, the data items are displayed on the ticker pane in a substantially continuous manner. Furthermore, the data items are being replaced or updated on a scheduled basis in an effort to have up-to-date information, downloaded directed from the content providers, displayed on the ticker pane 142 on a substantially continuous basis. In addition, stream of data 150, 152, 154 and 156 (identifier or content teaser) displayed within the ticker display pane 142 can contain hyperlinks to link the user or the customer to the original sources or providers of the information or data or full content related to the data items or identifiers 150, 152, 154 where he can receive more detailed information or full content directly from a source or content provider upon clicking on a hyperlink within a content teaser or identifier or data item 150 to thereby visit the source or content provider's web site. For instance, source identifier 144 of fig. 3, identifying the source or the provider (ESPN) of the stream of data or data items 150, 152, 154 and 156, displays an image associated with the source of the data items currently displayed on the ticker display pane 142 and may also include a hyperlink, which upon activation by the user or customer causes the system to retrieve and display a document on a server computer **or host (web page)** corresponding to the hyperlink wherein the displayed information or full document may represent advertising information. The source identifier 144 may further be an HTML page, **displayed on a web page**, allowing the content provider to place advertisements and other information in a display space for the source identifier (See abstract; figs 3-4 and 7; col. 3: 20 to col. 4: 9; col. 8: 14 to col. 9: 8). Finally, the user or the customer can customize the ticker display pane 142 (dynamic component) using the option button 160 of fig. 3

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that allows the user or customer to, for example, customize provided content or to select information sources; otherwise the system or the host or server system will control how the data items or content teaser should be displayed in the ticker display pane 142 and select which information sources will provide the data items (host customizes dynamic component) (col. 9: 37-48; claim 6 of the current reference). It is herein understood that the user's computer is coupled to a web site (first web site), over a computer network or the Internet, where data items or content teasers or identifiers can be downloaded or retrieved in real-time from sources or content providers (content web sites) and displayed on the user's computer and wherein, upon clicking on a hyperlink embedded within a content teaser or identifier or data item, the user or customer can visit the source or content provider's web site (first content web site) to request or receive full content or full document, such as full sport news, associated with a content teaser or sport news headline from ESP network that was selected or activated by the user or customer.

USP 5,774,170 to Hite discloses a system wherein when a match is found between a locally stored CID and the CID (commercial ID) transmitted with the advertisement or commercial, the commercial or advertisement is then presented to the viewer. If there is no match, then the inserted commercial is ignored or discarded **(determining if a CID code or data element transmitted within an advertisement embedded in a data stream/broadcast is compatible to a local condition or locally stored CID code, representing the viewer's interest or preference, before temporarily storing the advertisement in the memory (cache memory) and displaying it during a triggering event or programming or data stream break).**

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Any inquiry concerning this communication from the Examiner should be directed to Jean D. Janvier, whose telephone number is (571) 272-6719. The aforementioned can normally be reached Monday-Thursday from 10:00AM to 6:00 PM EST. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Mr. James Myhre, can be reached at (571) 272- 6722.

Non-Official- 571-273-6719.

Official Draft : 571-273-8300

05/23/09

/J. J./

/Jean Janvier/
Primary Examiner, Art Unit 3688

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/James W Myhre/
Supervisory Patent Examiner, Art Unit 3688